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ABSTRACT

The adversary principle, as used in law proceedings for judging merits of cases involving opposing parties, is considered as an aid to educational evaluation and decision-making. Its use in education is suggested as an alternative way of interpreting, synthesizing, and reporting evidence. Potential uses discussed include 1) exploring values inherent in a new or existing curriculum, 2) estimating the congruence between an innovation and the existing school system, 3) revealing how various group representatives interpret the same data, 4) informing educators of the advantages and limitations of a project, 5) resolving disputes regarding the fulfillment of performance contracts, and 6) arriving at actual decisions to be implemented. The relevance of the use of adversary proceedings to three widely discussed evaluation models is shown. A trial hearing conducted at the Hawaii Curriculum Center to explore the practicality of the technique is described in detail. Advantages and limitations of the adversary principle as a strategy for educational evaluation and decision-making are fully discussed. (Author/AG)

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APPLICATION OF ADVERSARY PROCEEDINGS TO EDUCATIONAL EVALUATION AND DECISION-MAKING

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APPLICATION OF ADVERSARY PROCEEDINGS TO EDUCATIONAL EVALUATION AND DECISION-MAKING

During the decade of the sixties the concept of educational evaluation has undergone an interesting expansion beyond judging the final outcomes of an endeavor to that of providing information to decision-makers to assist them in planning projects, implementing them and judging their intended and unintended effects. Much of the methodology of evaluation, however, has not kept pace with the expanded concept of its broader functions.

A frequently cited weakness of educational evaluation today is its reliance upon the psychological testing model as its chief methodology. Such evaluations usually avoid questioning the value of the objectives of a new project or curriculum and instead focus upon judging the extent to which a project has achieved its stated objectives. Scriven and others have emphasized the need to examine critically the assumptions and objectives upon which a project is based (Scriven, 1967). Unfortunately a few, if any, methods exist for judging the values of a project in terms of benefit to either individual students or to society.

A second limitation to the psychological testing model for evaluation is that it is more suited for research, i.e. the creation of new knowledge, than it is for practical decision-making. For example, although one instructional strategy may be found, with certain types of students, to produce academic gains that are statistically significant over a second instructional strategy it does not automatically follow that the first instructional strategy should be employed. Thus, a gap exists between empirical findings and administrative decisions to implement certain practices. A third limitation to the psychological testing model is that it tends to limit sharply the variables to be examined. Educational evaluation is seldom related directly to practical

decision-making because evaluation often emphasizes the easily quantifiable aspects of a project and neglects the less tangible aspects which are often more directly related to decision-making. For example, the decision as to whether to adopt a new school curriculum is seldom based solely upon the research data related to student academic performance. Other variables such as the congruence of the new curriculum with the existing school curriculum and facilities; the willingness of the school board to fund the new curriculum; and the estimated level of acceptance of the project by students, educators, and the community must also be considered.

Adversary Proceeding. One model that can handle the interpretation of both qualitative and quantitative information in reaching sound decisions comes from the field of law. The adversary proceeding has been established as an administrative hearing process for judging the merits of a case involving opposing parties. The hearings officer sometimes serves the combined roles of judge as well as the representative for both of the litigants. At other times separate prosecution, defense, hearings officer, and jury may be used. The system of litigation is based on the "fight" theory which states that "the facts in a case can best be ascertained if each side strives as hard as it can, in a keenly partisan spirit, to bring to the court's attention the evidence favorable to that side" (Auerbach, 1961). Judge Jerome Frank has argued that although this has invaluable qualities with which we cannot afford to dispense "the partisanship of the opposing lawyers blocks the uncovering of vital evidence or leads to a presentation of vital testimony in a way that distorts it" (Frank, 1949). Frank discusses in detail some factors that strengthen and weaken the fight theory.

Some characteristics of the adversary proceedings make them more appropriate than either a criminal or civil court model would be for educational decision-making. For example:

1. The rules established for handling the adversary proceedings are quite flexible.
2. Complex rules of evidence are replaced by free evaluation of evidence based solely upon whether the evidence is considered by the hearings officer to be relevant.
3. Both parties can be required before the trial to inform the hearings officer of all relevant facts, means of proof, and names of witnesses.
4. A copy of the charges are furnished to the hearings officer and defendant prior to the trial and the defendant has the option of admitting in advance to certain charges and challenging others.
5. Witnesses are allowed to testify more freely and to be cross-examined.
6. Experts are often called upon to testify even before the trial.
7. Pre-trial conferences of the hearings officer with both parties tend to make the trial less a battle of wits and more of a search for relevant facts.
8. In addition to the two parties involved, other interested groups may be permitted to participate in the proceeding.

Applications to Educational Evaluation. The suggested use of adversary proceedings as an aid to decision-making in education is not intended as a replacement for existing designs for collecting and analyzing data. Its primary value would serve as an alternative way of interpreting, synthesizing, and reporting evidence. At the present time much of the data shown in evaluation reports is allowed to pass unchallenged in terms of underlying assumptions, rationale, or method of collection and analysis. The adversary system allows for the competitive consideration of an alternative proposal or at least a devil's advocate role to keep the evaluation intellectually honest. Specifically, the adversary system could be used to:

1. Explore values inherent in a new or existing curriculum. One of the problems existing in most comparative evaluations is the failure to specify the theory or rationale behind the curriculum as well as the assumptions implicit in the evaluation design. For example, a typical pre-post design where the measures are administered in September and May assumes that the changes to be searched for will occur within one school year. In actuality, this may contradict the rationale of some long term curricula intended to produce a significant change after several years rather than a single year. A frank confrontation of the values of a particular curriculum from the point of view of relevance to children's present or future needs, societal needs or disciplinary integrity, may be a useful step before deciding whether or not it is wise to develop or implement such a curriculum.

2. Estimate the congruence between an innovation and the existing system. Often innovations are initiated without regard to the consequences of the innovations are initiated without regard to the consequences of the innovation upon the existing structure. If this were one of the charges to be considered in an adversary proceeding the evidence supporting the potential detriment of an innovation to an existing system could be systematically presented and debated. This could serve as a useful vehicle for revealing potential barriers to the success of an innovation in time to avert or overcome these barriers.

3. Reveal the way in which various group representatives interpret the same data. A jury could be selected that represents student, teacher, administrator, parent and community representatives. Although the same data might be presented to each juror, his interpretation of it might be completely different. If this information were made known

to the decision-maker it could improve his communication with these groups. He might also choose to involve these groups in making joint decisions. The implications of this process for meaningful community involvement are far reaching. From both a practical and a research point of view it would be interesting to learn what criteria and types of evidence are considered important by these group representatives in reaching their verdict.

4. Train teachers, supervisors, and administrators. Those educators who could observe or participate in such a trial would gain insight into the advantages and limitations of a project that might otherwise go undetected.

5. Resolve disputes regarding the fulfillment of performance contracts. With the spread in popularity of performance contracts, where a company would be paid only for those students who reach a predetermined level guaranteed in advance by the company, it appears likely that disputes over the successful completion of such contracts will arise. The adversary proceedings would probably be an effective way of resolving the dispute. Undoubtedly a wide variety of evidence and expert testimony would be involved.

6. Arrive at the actual decision to be implemented. The exact relationship of the adversary proceedings to the actual making of decisions could take several forms suggested in the five uses proposed above. The educational decision maker may in fact serve as the hearings officer and his verdict could be the decision itself. He might wish to share his decision making powers with several other jurors such as a student, teacher, or community representative and give each one including himself one vote. At the other end of the continuum the decision maker may wish to simply accept the findings of the jury as

one additional piece of data coupled with the actual evidence presented in the trial. Both types of information would then serve as inputs into his decision-making.

The use of the adversary proceedings is especially relevant in implementing three evaluation models--the CIPP model developed by Daniel Stufflebeam, the Stake model and the Pittsburgh model designed by Malcolm Provus. The CIPP Evaluation Model is based upon the concept of evaluation as a process "to acquire and use information for making decisions associated with planning, programming, implementing, and recycling program activities" (Stufflebeam, 1967). Planning decisions are those which focus on needed improvements by specifying the domain, major goals, and specific objectives to be served. Programming or structuring decisions specify procedure, personnel, facilities, budget, and time requirements for implementing planned activities. And recycling decisions include terminating, continuing, evolving, or drastically modifying activities. Of these four types of decisions, planning and recycling decisions focus more upon ends than upon means and could be profitably assisted by the thorough examination of the issues as occurs in the adversary hearings.

The Stake evaluation model (Stake, 1967), stresses the essential elements of an evaluation as being description and judgment. After describing the congruence between the intents and observations of a project he states that judgments are made by comparing the descriptive data from one program either with some absolute standard of excellence or with some relative comparison such as data from other programs. The interpretation of such comparisons becomes more credible if they are put to a systematic and thorough analysis such as could occur through the adversary proceedings.

The Pittsburgh evaluation model, operating in the Pittsburgh Public Schools, is divided into four stages (Provus, 1967). Stage 1 serves to assess

viability and feasibility of the program design. Stage 2 assesses implementation of the program and validity of program assumptions. Stage 3 assesses the fidelity of the operating program to the program design and assesses effectiveness of the operating program and validity of program assumptions. Stage 4 evaluates the fidelity of the operating program to that of the program design and assesses the efficiency and economy of the operating program. The adversary system would appear as one feasible strategy for any of these four stages.

A Trial Run. After several meetings to discuss the adversary proceedings potential for educational evaluation to which a lawyer and several consultants were invited, a decision was made by a group of curriculum specialists, teachers, and evaluators from the Hawaii Curriculum Center at the University of Hawaii to hold such a hearing. The Hawaii Curriculum Center is a joint operation between the University of Hawaii and the State Department of Education which was formed to develop new curricula and to field test and evaluate selected curricula developed in other parts of the county. The Hawaii Curriculum Center includes curriculum development specialists and teachers from the University Laboratory School. The purpose of the hearing held in February 1970 was to explore the technique of a modified judicial model, the administrative adversary hearing, as an aid to curriculum evaluation. The focus was on exploring the technique rather than on the substantive concern. The issue selected for the hearing was a hypothetical one, whether the curriculum Man: A Course of Study, developed by the Educational Development Center in Massachusetts, should be adopted for the public schools in Hawaii.

The chairman of the Social Science department at the University Laboratory School who has had extensive experience in teaching and evaluating this course was selected to present the case for the adoption of Man. The former chairman of that department who had also taught and evaluated the course presented the case for its rejection. An experienced curriculum planner and administrator at the Center who had formerly been the Director of Research for the Hawaii Department of Education served as the hearings officer. Three judges were appointed for this hearing, a public school sixth grade social studies teacher who had never taught Man, the State Department of Education's program specialist in social studies, and a university evaluation officer. The writer served as a special assistant to the hearing officer to obtain feedback information on the experimental use of the hearing for curriculum evaluation.

Approximately forty members of the University faculty or State Department of Education accepted an open invitation to observe and comment upon the hearing.

The hearing officer oganized the pre-trial conferences with the defense and prosecution; established flexible rules of operation; required that a written outline of the arguments against the adoption of Man be given to the defense and to himself prior to the hearing; conducted the hearing; ruled on the admissability of evidence and the propriety and relevance of questions if objected to by either party; limited the scope of the hearing to fit a pre-determined two hour period; and specified which points were in contention at any time during the hearing.

Several weeks of part-time work were involved in the preparation of the case by the defense and prosecution both of whom had had some law school training. Both of these men felt this time period was too short to properly prepare their cases but were persuaded to do their best within the two weeks allotted.

The agenda for the hearing contained the following items:

1. A call to order, review of procedures and introduction of participants by the hearing officer
2. Technical instructions to the jury by the special assistant to the hearing officer. These instructions stated that since this was the first time an adversary hearing had been attempted as part of a curriculum evaluation, a written statement was desired after the hearing summarizing their separate verdicts based upon the evidence presented at the hearing. Their evaluation of the hearing itself was also requested.
3. Recommendation for the adoption of Man with background and description of the course (including excerpts from a taped talk by Jerome Bruner who was instrumental in the development of the curriculum),

by the defense.

4. The introduction and main points in the case against the adoption of Man into the public schools of Hawaii presented by the prosecution. These main points were:

   A. Weak rationale for inclusion in social studies program

      (1) Irrelevance to democratic citizenship goals.
      (2) Antithetical to minimum coverage needed in the social studies
      (3) No relationship to scope and sequence of Hawaii state curriculum program in social studies.

   B. Dubious Theoretical foundation of the curriculum

      (1) Ethology lacks theoretic structure.
      (2) Anthropological notions have not demonstrated analytical power vis-a-vis contemporary large scale social phenomena.
      (3) Conjunction of animal and human studies bound to implant theoretical confusion, simplistic notions.
      (4) Structural and personal knowledge conceptions at war in this curriculum.
      (5) Content utterly remote from experience of Hawaiian children
      (6) Notion that materials enable children to empathize with strange cultural behavior probably naive.

   C. Objectives are nebulous in the extreme; and unspecifiable in student performance terms. Hence the curriculum cannot be evaluated.

   D. Practical considerations making successful implementation doubtful

      (1) Bizarre subject matter.
      (2) Lack of durability of materials.

5. Points conceded by the defense. These were points B. 1, 4 and 5 in the above outline.

6. Point by point charges by the prosecution. After each charge was presented there was a rebuttal by the defense; several witnesses including a curriculum theorist and social studies teacher at the University were called to testify.

7. After each rebuttal there was an opportunity for directed questions by the prosecution to the defense and/or his witnesses. Redirected

questions to the witnesses by the defense were allowed or a final response by the defense in cases where no witnesses were called.

8. Summaries by the prosecution and by the defense.

9. Report by the three jurors and open discussion with audience participation on the process of the case.

10. Adjournment by the hearing officer.

Reactions to the Hearings. A great deal of excitement was generated by the proceedings and the major consensus of the participants and audience was that the two hours of hearings had served as an excellent way of learning the many facets of a new curriculum. The majority felt that two hours was insufficient time to reach a verdict. Suggestions were made to: 1) reduce the scope of the points to be covered in any single hearing; 2) reduce the amount of debate between the prosecution and defense and make the hearing less personality-dominated; 3) rely more heavily upon documents, printed evaluation data, and the testimony of witnesses; 4) have a written argument for Man as well as the one against Man prepared in advance; 5) open the hearing to points of view expressed by the audience; 6) lengthen the time of the hearing or have several short hearings each on a different aspect of the issue; 7) be more flexible in deviating from the established procedures when the situations warrant ; and 8) have the actual decision-makers participate actively in the hearings rather than to simply review the juror's verdict based upon the hearings.

At the heart of the post-hearing discussion was whether the adversary hearing procedure should be used to delve into the facts and produce new information about the educational issue or whether it should serve as the decision-making mechanism itself. Opinion of the participants and audience on this question was split. The disadvantage seen in using the hearing as the decision-making mechanism itself is that some factors that the decision-maker

may need to consider before reaching a decision may not be touched upon in the hearing. If the hearing were to be used as a decision-making mechanism, however, it would seem appropriate for the decision-maker to serve as hearing officer and/or judge.

Potential Limitations. Although the adversary hearing holds high potential as one strategy for educational evaluation, there are several possible limitations that need to be considered. The first is the potential hang-up in legal technicalities. A second larger danger in using the adversary system is the tendency to become more influenced by the rehetoric of the prosecution, defense, or expert witnesses than by the substantivie data. Associated with this is the personal identification of the prosecution and defense with the educational issue being argued. This could lead to a feeling that an individual was on trial rather than an educational issue. In a few circumstances, however, it may be agreed upon to have the issue be the professional accountability of an individual or of an entire project staff. A final aspect of the hearings that might be considered a limitation by some is the amount of time required to adequately prepare and conduct such a hearing. On the other hand, several weeks of preparation and hearings may be very reasonable compared with the alternative of hastily making critical and costly decisions that prove unwise in the future because relevant factors were not considered.

The state program specialist in social studies who served as one of the jurors in the hearing summarized her reactions to the hearing as follows:

> I believe the adversary hearing is a meaningful way to assist in making curriculum decisions. Perhaps it is a more meaningful experience for curriculum and program specialists who must consider the substantive merits of the curriculum as primary, and other more practical considerations in implementation as secondary concerns. I say this because in areas such as the rational and theoretical basis of a curriculum, such a hearing can bring together much of what specialists have heard or read at various times and put things in a total perspective, giving due emphasis to various aspects of the curriculum. For decision-makers who must consider fiscal and other constraints, this might be a valuable experience especially if these considerations are part of the hearing.

The experimental use of the adversary proceedings in Hawaii as one strategy for educational evaluation and decision-making has indicated a strong potential for this method. It is hoped that this strategy will be creatively applied to other educational decision-making situations in other parts of the country and the results reported so that others may select procedures appropriate for their situation. From a research point of view the adversary hearings provide an interesting vehicle for studying the types of evidence found most useful to various groups in reaching decisions.

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